

## 12.201

the contract's remedies adequately protect the Government's interests.

[60 FR 48241, Sept. 18, 1995, as amended at 61 FR 39192, July 26, 1996; 62 FR 64917, Dec. 9, 1997; 64 FR 32743, June 17, 1999; 66 FR 53484, Oct. 22, 2001; 67 FR 56121, Aug. 30, 2002; 68 FR 4050, Jan. 27, 2003; 69 FR 8313, Feb. 23, 2004; 69 FR 34227, June 18, 2004; 69 FR 38955, June 29, 2004]

### Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

#### 12.201 General.

Public Law 103-355 establishes special requirements for the acquisition of commercial items intended to more closely resemble those customarily used in the commercial marketplace. This subpart identifies those special requirements as well as other considerations necessary for proper planning, solicitation, evaluation and award of contracts for commercial items.

#### 12.202 Market research and description of agency need.

(a) Market research (see 10.001) is an essential element of building an effective strategy for the acquisition of commercial items and establishes the foundation for the agency description of need (see part 11), the solicitation, and resulting contract.

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services may be suitable. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the type of product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirements or essential physical characteristics. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the Government.

(c) Follow the procedures in subpart 11.2 regarding the identification and availability of specifications, standards and commercial item descriptions.

(d) Requirements documents for electronic and information technology

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must comply with the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 (see subpart 39.2).

[60 FR 48241, Sept. 18, 1995, as amended at 62 FR 264, Jan. 2, 1997; 66 FR 20897, Apr. 25, 2001]

#### 12.203 Procedures for solicitation, evaluation, and award.

Contracting officers shall use the policies unique to the acquisition of commercial items prescribed in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in part 13, Simplified Acquisition Procedures; part 14, Sealed Bidding; or part 15, Contracting by Negotiation, as appropriate for the particular acquisition. The contracting officer may use the streamlined procedure for soliciting offers for commercial items prescribed in 12.603. For acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$5,000,000 (\$10,000,000 for acquisitions entered into under the authority of 12.102(f)(1)), including options, contracting activities shall employ the simplified procedures authorized by Subpart 13.5 to the maximum extent practicable.

[60 FR 48241, Sept. 18, 1995, as amended at 62 FR 264, Jan. 2, 1997; 62 FR 64917, Dec. 9, 1997; 69 FR 8313, Feb. 23, 2004]

#### 12.204 Solicitation/contract form.

(a) The contracting officer shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, if (1) the acquisition is expected to exceed the simplified acquisition threshold; (2) a paper solicitation or contract is being issued; and (3) procedures at 12.603 are not being used. Use of the SF 1449 is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.

(b) Consistent with the requirements at 5.203 (a) and (h), the contracting officer may allow fewer than 15 days before issuance of the solicitation.

[62 FR 264, Jan. 2, 1997]

#### 12.205 Offers.

(a) Where technical information is necessary for evaluation of offers,